

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)  
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May 4, 1994

BURTON W. OLIVER  
*Executive Director*

Mr. A--- R. B---  
B--- & A---  
XXXX --- --- ---, Suite XXX  
---, CA XXXXX

Re: **REQUEST FOR LEGAL OPINION**

Dear Mr. B---:

We have received your letter dated April 20, 1994 in which you requested an opinion from this office as to the imposition of personal liability upon corporate officers for the failure of a corporate business to pay sales and use taxes. Since you have not identified a specific taxpayer, this letter cannot constitute "written advice" within the meaning of Revenue and Taxation Code section 6596.

In your letter, you state that a representative for the Board advised you that under Revenue and Taxation Code section 6829, the Board can issue a dual determination against "any corporate officer with a financial stake in the corporation." The representative stated to you that a corporate officer with general supervisory duties in the corporation would be responsible, regardless of whether such duties included the preparation of tax returns or the payment of taxes. You state that the representative was under the impression that any corporate officer who had an interest in the corporation, and who financially benefitted from the corporation, could be held responsible for the unpaid taxes.

Revenue and Taxation Code section 6829 provides that upon termination, dissolution or abandonment of a corporate business, any officer or other person (1) having control or supervision of the corporation or (2) who is charged with the responsibility for the filing of returns or the payment of tax for the corporation or (3) who is under a duty to act for the corporation in complying with any requirement of the Sales and Use Tax law shall be personally liable for any unpaid corporate taxes under the specified conditions.

We agree with your statement in your letter that a corporate officer should not be held liable under Section 6829 merely because he or she has a financial interest in the corporation.

We believe that the following statement from the Compliance Policy and Procedures Manual (Section 715.026) correctly states the Board's policy:

"The key to personal liability under Section 6829 is determining who, based upon our investigation of the facts and circumstances of the case, had the actual duty and responsibility for reporting and paying the sales and use taxes within the day-to-day operation of the corporation. This could be a 'chief financial officer,' 'general manager,' or any other similarly titled person hired for this purpose, given the authority to so act, and who may have assured the officers and the Board of Directors of the corporation that the taxes were current."

This statement indicates that liability under Section 6829 should be imposed on a corporate officer or other person who had the responsibility for the payment of taxes and the knowledge that those taxes were not paid. If the person delegated to pay taxes fails to fulfil his or her duty, personal liability should be imposed on a corporate officer with general supervisory control over the corporation if that corporate officer had knowledge that the corporate taxes were not paid.

The failure of a corporate officer (with general supervisory control over a corporation) to insure that taxes are paid when he or she discovers that the person delegated to pay taxes has not paid those taxes will make the corporate officer personally liable under Section 6829.

If the corporation is small, in most cases all corporate officers will have knowledge that the taxes are not paid.

Personal liability should then be imposed by the Board on the corporate officer or other person who had the ability to remedy the corporate failure to pay taxes and failed to do so.

Very truly yours,

Thomas Cooke  
Staff Counsel

TJC:plh

cc: --- --- District Administrator - --